

ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE BY THE CITY OF FORT WAYNE, INDIANA OF ITS ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1996 (L.H. CARBIDE CORPORATION PROJECT) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$3,300,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF CERTAIN MANUFACTURING FACILITIES FOR THE BENEFIT OF L.H. CARBIDE CORPORATION; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A LOAN AGREEMENT, A TRUST INDENTURE AND RELATED DOCUMENTS WITH RESPECT TO SAID BONDS; AND AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE ISSUANCE OF SAID BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is authorized and empowered by the Indiana Code §36-7-12, as supplemented and amended (the "Act"), to finance any land, building, or other improvement suitable for industrial, commercial or manufacturing enterprises for the purposes set forth in the Act; and

WHEREAS, L.H. Carbide Corporation (the "Developer") desires to acquire, construct, and equip certain manufacturing facilities (the "Project"), located in Fort Wayne, Allen County, Indiana, and has requested the Issuer, in order to finance a portion of the costs of the Project pursuant to the provisions of the Act, to issue and sell its economic development revenue bonds, in the principal amount not to exceed \$3,300,000; and

WHEREAS, the Issuer desires to issue and sell its economic development revenue bonds to finance a portion of the costs of the Project, and authorizing such actions as might be required to implement such stated intention; and

WHEREAS, this Common Council is the elected legislative body of Fort Wayne,

1 Indiana and is the applicable elected representative required to approve the issuance of
2 the hereinafter-described Bonds within the meaning of Section 147(f) of the Internal
3 Revenue Code of 1986, as amended; and

4 **WHEREAS**, the City of Fort Wayne Economic Development Commission has
5 performed all action required by it of the Act preliminary to the adoption of this Bond
6 Ordinance and has approved and forwarded to this Common Council forms of the
7 documents referred to in the following paragraphs; and

8 **WHEREAS**, pursuant to and in accordance with the provisions of the Act, the Issuer
9 is now prepared to issue and sell its Economic Development Revenue Bonds, Series 1996
10 (L.H. Carbide Corporation Project) in a principal amount not to exceed \$3,300,000 (the
11 "Bonds") pursuant to the following:

12 (a) Loan Agreement dated as of October 1, 1996 (the "Agreement") between the
13 Issuer and the Developer, including the Promissory Note (the "Note") of the
14 Developer issued thereunder;

15 (b) Trust Indenture dated as of October 1, 1996 (the "Indenture") from the Issuer to
16 the trustee named therein (the "Trustee"; and
17

18 **WHEREAS**, forms of the Agreement and the Indenture have been presented to and
19 are before this meeting; and
20

21 **WHEREAS**, the Act and all documents to be signed by the Issuer provide that the
22 Bonds shall never constitute the debt or indebtedness of the Issuer within the meaning of
23 the constitution or statutes of the State of Indiana, and shall not constitute nor give rise to
24 a pecuniary liability of the Issuer or a charge against its general credit or taxing powers
25 and that the Bonds will be payable from and secured only by the revenues arising from
26 the pledge and assignment under the Indenture and the Issuer's rights under the
27
28
29

Agreement.

1 **NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of
2 Fort Wayne, Indiana, as follows:

3
4 **SECTION 1.** Pursuant to the Act, this Common Council does hereby authorize the
5 issuance of its economic development revenue bonds in accordance with the terms of the
6 Agreement and the Indenture and does hereby determine it is in furtherance of the public
7 purposes set forth in the Act and that, therefore, providing financing for the Project
8 through the issuance and sale of its economic development revenue bonds is in the public
9 interest.

10 **SECTION 2.** To finance the costs of acquiring, constructing, and equipping the
11 Project, the Issuer does hereby authorize the issuance of its economic development
12 revenue bonds under the Act, to be designated Economic Development Revenue Bonds,
13 Series 1996 (L.H. Carbide Corporation Project), in a principal amount not to exceed
14 \$3,300,000. The Bonds will be subject to a mandatory sinking fund requirement as set
15 forth in the Indenture and will have a stated maturity date of October 1, 2003. Interest on
16 the Bonds shall be payable on the first day of January, April, July and October of each
17 year commencing January 1, 1997, at the place and in the medium provided in the
18 Indenture. The Bonds shall bear interest in a seven (7) day adjustable mode at an initial
19 rate of between 2% and 7%. The Bonds shall be dated, shall be substantially in the form
20 and in the denominations and shall have the terms and provisions (including, without
21 limitation, provisions relating to their registration, authentication, and redemption)
22 provided for in this Ordinance and in the Indenture.

23 **SECTION 3.** The Bonds are to be issued in accordance with and pursuant to the
24 Agreement and in the Indenture. The Agreement provides for the issuance of the Bonds
25 pursuant to the Indenture solely for the purpose of financing the costs of the Project. The
26 Bonds are to be secured solely and only by a pledge and assignment to the Trustee of

rights of the Issuer under the Agreement (except certain rights to indemnification and expenses of the Issuer) and the Note of the Developer. The Agreement further provides for certain representations and warranties by the Issuer and the Developer, for certain affirmative covenants and/or remedies in connection with the failure to perform certain covenants thereunder. The Indenture specifically provides that no provision of the Bonds shall constitute the debt or indebtedness of the Issuer within the meaning of any provision of limitation of the constitution or statutes of the State of Indiana, and shall constitute, nor give rise to, a pecuniary liability of the Issuer or a charge against its general credit or taxing powers. Recourse on the Bonds executed and delivered by the Issuer pursuant to the Agreement and the Indenture may be had only against the security for the Bonds as provided therein and in the Agreement and the Indenture.

SECTION 4. The Mayor of the Issuer is hereby authorized, empowered and directed to execute the Bonds by his or her manual or facsimile signature and the City Clerk of the Issuer is hereby authorized, empowered and directed to attest the Bonds by his or her manual or facsimile signature, and the official seal of the Issuer or the facsimile thereof shall be affixed thereto or imprinted thereon, and the Mayor and the City Clerk of the Issuer shall cause the Bonds, as so executed and attested, to be delivered to the Trustee under the Indenture. In case any official whose signature should appear on any Bonds shall cease to be such official before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in the office until delivery.

SECTION 5. The Issuer has no obligation with respect to the Project except as authorized hereby, and all costs, expenses, taxes, governmental charges and fees, and charges with respect to the Project shall be paid by the Developer.

SECTION 6. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor and the City Clerk of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Indenture with such changes therein as

1 shall be approved by such persons executing any such documents, and without the need
2 for further approval of this Council, their execution to constitute conclusive evidence of
3 such approval, and the City Clerk is hereby authorized and directed to affix to the
4 Indenture the corporate seal of the Issuer.

5 **SECTION 7.** The appointment of Peoples Bank & Trust Company as Trustee and
6 Paying Agent pursuant to the Indenture is hereby approved.

7 **SECTION 8.** The Loan Agreement is hereby approved in substantially the form
8 submitted to this meeting, and without the need for the further approval of this Council,
9 their execution to constitute conclusive evidence of such approval, and the City Clerk is
10 hereby authorized and directed to affix to the Loan Agreement the corporate seal of the
11 Issuer.

12 **SECTION 9.** The authorized officials of the Issuer are hereby empowered and
13 directed to execute and deliver the Placement Agreement, Arbitrage Certificate, Private
14 Placement Memorandum and all other documents and instruments which may be required
15 in connection with the issuance and delivery of the Bonds. For purposes of this section,
16 “authorized officials of the Issuer” shall mean the Mayor or the City Clerk of the Issuer.

17 **SECTION 10.** It is the intention of the Common Council that this Ordinance shall
18 constitute the approval of said Common Council under Section 147(f) of the Internal
19 Revenue Code of 1986, as amended.

20 **SECTION 11.** If any provisions of this Ordinance shall be held or deemed to be or
21 shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other
22 provision herein contained or render the same invalid, inoperative or unenforceable to any
23 extent whatever; provided that no holding of invalidity shall require the Issuer to make
24 any payments from revenues other than those derived from the Agreement and the Note
25 in the Indenture.
26

SECTION 12. No recourse shall be had for the payment of the principal of and interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Agreement or the Indenture against any past, present, or future member, officer, or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise.

SECTION 13. All resolutions and regulations or parts thereof heretofore adopted or passed which are in conflict with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 14. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Crawford,
and duly adopted, read the second time by title and referred to the
Committee on Finance (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne,, Indiana, on _____, 19____, the _____ day of _____
M., E.S.T. _____ at _____ o'clock

DATED: 9-24-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Crawford,
and duly adopted, placed on its passage. PASSED Lost
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>✓</u>
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY				<u>✓</u>
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 10-8-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 8-71-96
on the 8th day of October, 1996

ATTEST:

Sandra E. Kennedy (SEAL) DD Schmidt
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 9th day of October, 1996,
at the hour of 11:30 o'clock 7 M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 11th day of October,
1996, at the hour of 8:00 o'clock A M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR



Richard E. Fox
(219) 423-8913

September 19, 1996

Members of the Common Council
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Re: Economic Development Revenue Bond Financing for L. H. Carbide Corporation

Dear Council Members:

Attached is a proposed Ordinance which L. H. Carbide Corporation (the "Company"), an Indiana corporation with offices at 4420 Clubview Drive, Fort Wayne, Indiana, would ask to be introduced at the Council's general session on Tuesday, September 24, 1996.

This Ordinance would authorize the issuance of \$3,300,000 in economic development revenue bonds, which amount would be loaned to the Company for the acquisition and construction of a 10,000 square foot addition to its existing manufacturing facility and for the acquisition and installation of equipment for the manufacture of steel stamping dies.

The Fort Wayne Economic Development Commission and this Council have previously adopted inducement resolutions, preliminarily approving this proposed financing. The Bonds will be supported by an irrevocable direct pay letter of credit issued by NBD Bank, N.A. The financing will be structured as a variable rate demand issue, allowing the holders of these Bonds to require repurchase of the same on a periodic basis. This "lower floater" form of financing is designed to secure the lowest possible interest rate. The undersigned will be serving as Bond Counsel for this transaction.

Representatives of the Company will be available at the Council's committee session on October 1, 1996, to answer any questions anyone may have. Thank you for your consideration.

Cordially,

BARRETT & McNAGNY

A handwritten signature in cursive script that reads "Richard E. Fox".

Richard E. Fox

REF:cki

Enclosure

cc: R. David Boyer, Esq.

BILL NO. S-96-09-18

REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) authorizing and providing
for the issuance by the City of Fort Wayne, Economic Development
Revenue Bonds Series 1996 (L.H. Carbide Corporation Project) in a principal
amount not to exceed \$3,300,000

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<u>Thomas C. Henry</u>	_____	_____	_____
<u>John N. Crawford</u>	_____	_____	_____
<u>William H. Bell</u>	_____	_____	_____
<u>Robert J. Davis</u>	_____	_____	_____
<u>Thomas H. Hayes</u>	_____	_____	_____
<u>Martin A. Bender</u>	_____	_____	_____
<u>O. Schumacher</u>	_____	_____	_____
<u>Clifford R. Edwards</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATED: 10-8-96

Sandra E. Kennedy
City Clerk